IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 12037 of 2004

Between:

1 Sree Bharati English Medium School, Kakalapalli Colony, Kalyandurg Road, Anantapur rep., by its Correspondent Shri P.V.Venkataswamy, s/o P.Anjanappa r/at 1-3-302, Rangaswamy Nagar, Anantapur.
2 Sree Bharati Education Society, Registration No.955/2001 Kakalapalli Colony, Kalyandurg Road, Anantapur rep., by its President P.V.Venkataswamy, s/o P.Anjanappa, r/at 1-3-302, Rangaswamy Nagar, Anantapur.

..... PETITIONERS

AND

1 The Commissioner and Director of School Education, Government of Andhra Pradesh, Hyderabad.
2 The Regional Joint Director of School Education, Cuddapah.
3 The District Educational Officer, Anantapur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue writ of mandamus or any other appropriate writ or direction declaring the order of the 1st respondent passed in L.Dis.No.1219/B4-1/2004 dated 19-6-2004 and the consequential order of the 2nd respondent issued in L.Dis.No.5832/A3/2003 dated 27-6-2004 as illegal, arbitrary and contrary to the rules and consequently direct the 2nd respondent to grant recognition to VIII Class in 1st petitioner school in accordance with Rule 9(5) of G.O.Ms.No.1 Edn., dated 1-1-1994 from the academic year 2003-04 onwards.

Counsel for Petitioners:MR.O.MANOHER REDDY

Counsel for Respondents: GP FOR EDUCATION

The Court, at the stage of admission, made the following :

ORDER

Second petitioner-Sree Bharati Education Society, who established the first petitioner school, submitted a proposal to the second respondent-Regional Joint Director of School Education, Kadapa on 25.10.2002, for grant of permission to start Class-VIII from the academic year 2003-04. It appears that after calling for the necessary report from the District Educational Officer-3rd respondent, the 2nd respondent wrote a letter on 10.3.2004, requesting the third respondent to take action as per Rule 4(1) (a)(b) and (c) of Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993 (hereinafter referred to as 'the Rules') as specified in G.O.Ms.No. 1 Edn., dated 1.1.1994. The third respondent, in turn, submitted a report, on 14.5.2004, recommending the case of the petitioners for grant of permission to open next higher class-VIII during the academic year 2003-04. After receipt of the said report, second respondent wrote a letter to the first respondent-Commissioner and Director of School Education, stating that the petitioners management has not fulfilled the conditions stipulated in Rule 4(1)(c) of G.O.Ms.No.1 dated 1.1.1994 and Rule 78 of the A.P. Integrated Education Rules, 1966. After some internal correspondence between the first and second respondents, by the impugned letter, dated 19.6.2004, the first respondent requested the second respondent to inform the petitioners' management that it is not feasible to accord permission to open Class-VIII for the academic year 2003-04, and accordingly, the second respondent by consequential letter, dated 27.6.2004, informed the same to the petitioners' management. The letter, dated 19.6.2004 of the first respondent reads as hereunder:

"In view of the above, the Regional Joint Director of School Education, Cuddapah is requested to inform the said management that it is not feasible to accord permission for opening of Class-VIII (EM) during 2003-04 in respect of Sree Bharathi (E.M.) School, Anantapur as the management has not fulfilled the conditions stipulated in the Rule 4(1)(c) of G.O.Ms.No.1/Edn. dated 1.1.1994 and rule 78 of A.P.E.R."

Questioning the above letters, the present writ petition is filed.

It is contended by learned counsel for the petitioners that after enactment of the A.P.

Education Act and the Rules, the A.P. Integrated Education Rules, 1966 have no statutory force and they will not operate the field, and the rejection of application of the petitioners for permission to start class-VIII on the ground that sufficient number of students are not available, is arbitrary and illegal. It is further contended that by virtue of the deeming provision under Rule 7 of the Rules, it is not necessary for the petitioners to obtain permission, and hence, the question of rejection of petitioners' application does not arise. It is his further case that Rule 10(12) of the Rules deals with regard to fixation of teacher pupil ratio and it does not prescribe any minimum strength that has to be followed in a particular class for grant of permission. Learned counsel has drawn the attention of this Court to Rule 6 of the Rules, which prescribes procedure for submitting application seeking permission for establishment of a new school or upgradation of the existing school with necessary documents, and also Rule 7 of the Rules, which envisages scrutiny and grant of permission. Rule 7 of the Rules reads as follows:

"Scrutiny and Grant of permission:

(1) On receipt of an application, the competent authority shall cause such verification of the proposal as is necessary and shall communicate the decision thereof by the 31st January. In case of refusal of permission, the order shall contain reasons:

(2) The grant of permission shall be in Form II;

(3) If the decision is not communicated within the period mentioned in sub rule (1), the permission is deemed to have been granted."

It is not in dispute that the first petitioner was granted recognition in respect of classes- I to VII. When the petitioners made an application to the second respondent seeking permission to start Class-VIII, the second respondent sought clarification from the first respondent with regard to the minimum strength that has to be maintained. In turn, the first respondent through letter dated 27.1.2004 directed the second respondent to examine the case and take appropriate action. Thereafter, after some internal correspondence, the first respondent passed the impugned order and the second respondent communicated the same to the petitioners.

A counter affidavit is filed on behalf of the respondents. It is stated therein that earlier, on the proposal submitted by the petitioners for establishment of upper primary school with classes-I to VII, during the academic year 2002-03, through proceedings, dated 6.6.2002, the third respondent has accorded permission to open

Classes-I to VI only, during the academic year 2002-03. Provisional Recognition was accorded for Classes-I to VI only during the academic year 2002-03 and 2003-04 by the third respondent vide proceedings, dated 19.10.2002. It is stated that permission to open Class-VII during the next academic year 2003-04 was accorded by the third respondent vide proceedings dated 22.5.2003, and provisional Recognition for the same was also accorded by proceedings dated 31-01-2004. It is further stated that the petitioners submitted a proposal to the second respondent for starting class VIII during the academic year 2003-04, who in turn, transmitted the same to the Deputy Education Officer, Anantapur, on 30-11-2002, calling for his remarks. But, in fact, the petitioners management can apply for grant of permission to start class-VIII only during the next academic year 2004-05, since permission and recognition to open Class-VII was accorded only during the year 2003-04. Though the petitioner relied on Rule 10(12) of the Rules specified in G.O.Ms.No.1 Edn., dated 1-1-1994, which deals with only teacher, pupil ratio, the same is not relevant, but in fact, Rule 78 of the A.P. Education Rules, 1966 is relevant. According to Rule 78, the optimum strength of a class or section of a class shall be 40 pupils, but ordinarily no class can be opened for a strength of less than 20. Even in G.O.Ms.No.1 Edn., dated 1-1-1994 under Rule 4(a), (b) and (c) it is mentioned as follows:-

"Criteria for Establishment of School:

(1) The following shall be the broad guidelines to be considered for grant of permission for the establishment of new schools or upgradation of existing schools.

(a) Educational needs of the localities taking into consideration the population of the school-going children in the locality and their coverage by the existing schools;

(b) Need to avoid unhealthy competition among the schools in the locality;

(c) The viability of the proposed school after taking into consideration of the facts resolved to the clauses (a) and (b) above.

Explanation:……."

It is stated that the petitioners management has not fulfilled the conditions mentioned in Rule 4(1)(a),(b) and (c) since as per the report of the Inspection Officer the strength in classes V to VII was only 04; 04; and 05, respectively. Further, as per the audited statements, the school has earned only Rs.33,900/- from 25-11-2001 to 31-3-2003, that too by way of fines and building fund, which is not acceptable, which clearly shows that the school is also not financially viable.

Heard the learned counsel for the petitioners and the learned G. P. for School Education. Perused the material available on record.

The learned counsel for the petitioners submitted that by virtue of Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993, the Rules of A.P. Integrated Education Rules, 1966 in exercise of the executive power cannot be made applicable. I see no force in the said submission. Even otherwise, Rule 4 of the Rules specified in G.O.Ms.No.1, dated 1.1.1994 clearly indicates that the educational needs of the localities have to be taken into consideration including the population of the school-going children in the locality and their coverage by the existing schools. It is also pertinent to note that under Rule 4(1)(c) it is obligatory on the part of the authorities to see the viability of the proposed school after duly taking into consideration of the facts resolved to the clauses (a) and (b) thereof.

The other submission made by learned counsel for the petitioners that sub-rule (12) of Rule 10 deals only with regard to fixation of teacher pupil ratio and in the absence of fixation of any minimum strength limit, the authorities are not justified in rejecting the proposal, cannot be countenanced for the reason that the viability of the proposed school is one of the factor, which has to be taken into consideration for granting permission in case of upgradation. It is to be seen from the impugned order that while considering the viability, the authorities have also taken the aid of Rule 78 of A.P. Integrated Education Rules, 1966, which are issued in the form of executive instructions. Further, there is no inconsistency between the A.P. Integrated Education Rules, 1966 and the Rules issued under G.O. Ms. No. 1, dated 1.1.1994.

In view of the above, viewed from any angle, the impugned order dated 19.6.2004 of the 1st respondent rejecting the application of the petitioners for permission to open Class-VII does not suffer from any infirmity or illegality and hence, the writ petition is liable to be dismissed.

The writ petition is accordingly dismissed. No costs.

A. GOPAL REDDY. J.

29th September, 2004

tsr.

To

1 The Commissioner and Director of School Education, Government of Andhra Pradesh, Hyderabad.
2 The Regional Joint Director of School Education, Cuddapah.
3 The District Educational Officer, Anantapur.

4 Two CCs to Government Pleader for Education, High Court Buildings, Hyderabad. (OUT).

5 Two CD copies.